THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.12751 OF 2006

DATED 26th SEPTEMBER, 2006

BETWEEN

M/s.Kashtopa Corporation rep.by Sunil Kumar Kamdar.

… Petitioner

and

The Principal Secretary to the Government, Revenue (UC-II) Department, State of Andhra Pradesh, Secretariat, Hyderabad and another.

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.12751 OF 2006

ORDER:

The petitioner is the firm. Statedly the firm owns huge extents of agricultural lands admeasuring Acs.190.17 guntas in survey Nos.35, 36, 37, 40, 42 to 47 and 50 to 53 situated in Gachibowli village, which the firm purchased under registered sale deeds in 1961 and 1964. After coming into force of Urban Land (Ceiling and Regulation) Act, 1976 (the Act, for brevity), the firm represented by Rasiklal R. Kamdar filed a declaration under Section 6(1) of the Act on 13.08.1976. After enquiring into the declaration, the second respondent issued draft statement under Section 8(1) and notice under Section 8(3) of the Act determining surplus extent of 7,69,458.63 square meters in survey Nos.50 to 53 while allowing 1,000 square meters under Section 4(1)(b) of the Act. The firm filed objections *inter alia* contending that the lands are agricultural lands not covered by the Act. It was noticed by the second respondent that an extent of Acs.137.17 guntas (5,56,131.49 square meters) in survey Nos.35, 36, 37, 40, 42, 45, 46 and 53/P) was declared surplus lands by the Land Reforms Tribunal (LRT) under A.P.Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 and the same was taken possession by the Government in October, 1976. Therefore, the same was deleted. With regard to balance of 2,14,480.40 square meters (7,70,611.89 – 5,56,131.49), the Special Officer allowed an extent of Acs.5.00 (20,243.30 square meters) as exempted under G.O.Ms.No.733, dated 31.10.1988 besides allowing 1,000 square meters as admissible under Section 4(1)(b) of the Act and declared an extent of 1,93,246.10 square meters in survey Nos.50, 51, 52 and 53 of Gachibowli village as surplus vacant land and issued final orders under Section 8(4) and final statement under Section 9 of the Act vide proceedings, dated 18.09.1995. Aggrieved by the same, Smt.Tara and 500 others filed an appeal before the appellate authority. The same was allowed on 13.09.1996 and the matter was remanded to the second respondent for fresh determination under Section 8(4) of the Act. At that stage, the second respondent found that the lands to the extent of 7,70,611.89 square meters in survey Nos.50, 51, 52 and 53/P of Gachibowli were in possession of the

protected tenants with tenancy rights under Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands, 1950. The Special Officer also took notice of the decision of the Supreme Court in **Atia Mohammadi Begum v State of Uttar Pradesh**[1] and by proceedings, dated 08.11.1996 treated the petitioner firm is not holder of lands under Section 2(l) of the Act. The matter was closed.

It appears the petitioner firm again filed a declaration under Section 15 of the Act declaring the lands in survey Nos.35, 36, 45, 46, 47/P and 53/P admeasuring Acs.57.14 guntas. This was done due to the orders of the LRT, Hyderabad, ordering restoration of lands to the petitioner firm which were taken possession in October, 1976. Again, the Special Officer conducted enquiry under Section 8 of the Act and issued final orders under Section 8(4) of the Act on 06.05.2005 determining the surplus vacant land in survey Nos.35/P, 36, 45/P, 46, 47, 53/P admeasuring Acs.52.14 guntas. However, the second respondent excluded the lands in survey Nos.50 to 53 from the computation on the ground that they belong to protected tenants and that the petitioner firm had no title over that. However, subsequently, the second respondent sent a report to the first respondent *inter alia* alleging that the land in survey No.50 admeasuring 68,796.62 square meters was not subject matter of litigation between the landholders and protected tenants, that the exclusion of the said land in survey No.50 was a mistake and accordingly sought to rectify alleged mistake under Section 45 of the Act and therefore, the errata is being issued by rectifying the computation under Section 45 of the Act. The petitioner assailed the said report/letter of the second respondent to the first respondent in W.P.No.11981 of 2006. Even while the said writ petition was coming for Admission, the second respondent issued proceedings, dated 24.11.2005, purportedly under Section 45 of the Act issuing errata. The same was challenged by filing the present writ petition. For this reason, earlier writ petition No.11981 of 2006 was dismissed as withdrawn giving liberty to the petitioner firm to pursue the present writ petition.

At the stage of Admission itself as many as seventeen (17) persons came on record as interested in the matter alleging that they purchased the property from the petitioner firm and they are vitally interested in the subject matter. This Court heard the learned senior counsel Sri K.Ramakrishna Reddy for the petitioner and E.Manohar for respondents 8 to 19 as well as Sri O.Mahonar Reddy for respondents 3 to 7. The matter is being disposed of at the Admission stage itself as all the counsel agreed that the matter be remanded to the second respondent for fresh consideration.

Learned senior counsel for the petitioner firm submits that the second respondent has no jurisdiction to re-compute the vacant land under Section 45 of the Act as there is no arithmetical mistake when the earlier final orders were passed in May, 2005. He placed reliance on the decision of the Supreme Court in **State of Punjab v Darshan Singh**[2] and a decision of this Court in **Syed Maqdoom Shah v Basheer Khatoon**[3]. Secondly, he would urge that when the Act does not permit piecemeal computation by the second respondent computation of the alleged surplus vacant land held by the petitioner twice or thrice is not permissible under law. Lastly, he would urge that even when exercising power under Section 45 of the Act if such exercise results in civil consequences, the owner of the land/declarant has to be issued notice to satisfy the test of fairness in administrative action. **Per contra**, learned senior counsel for respondents 8 to 19, Sri E.Manohar, submits that pursuant to the final orders under Section 8(4) issued in May, 2005, notification under Section 10(1) was issued on 12.05.2006 and notification under Section 10(3) was issued 04.06.2005. Therefore, the land no more vests in the petitioner firm and it has no *locus standi* to challenge the proceedings. Secondly, he would submit that the present impugned order was issued as errata in computation of the order under Section 8(4) of the Act, dated 06.05.2005 and therefore, the present writ petition is misconceived.

Section 45 of the Act empowers any officer or authority who passed the order, on his own motion or on an application received from the parties to correct clerical or arithmetical mistakes or errors arising from any accidental slip or omission at any time. The provision does not enable re-computation of the surplus vacant land in excess of ceiling area or delete or include any vacant land in the final determination under Section 8(4) of the Act. However, Section 34 of the Act enables the State Government to exercise its revisional jurisdiction for mending any illegality or impropriety in the order or proceedings passed under the Act. Secondly, when the declarant is to suffer civil consequences by reason of exercise of power under Section 45 of the Act, a notice ought to be issued. As the power to correct the mistakes can also be exercised on an application, there would not be any objection for issuing a notice to the person while rectifying the mistakes or arithmetical errors. On this limited ground alone, the impugned order cannot be sustained as admittedly no notice was issued.

In view of the above, this writ petition is disposed of. The impugned proceedings/order of the second respondent, dated 24.11.2005 is set aside. The matter is remitted to the second

respondent with a direction to consider all the objections that are raised by the petitioner and the respondents herein after issuing notice to them. It shall be open to the petitioner to raise all the objections before the second respondent.

The writ petition is accordingly disposed of with the above observations and directions. No costs.

(V.V.S.RAO,J)

26.09.2006.
pln

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[1] (1993) 2 SCC 546 = AIR 1993 SC 2465

[2] (2004) 1 SCC 328 = AIR 2003 SC 4179

[3] 2005 (5) ALD 602